IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CRIMINAL APPELLATE JURISDICTION

CRIMINAL APPLICATION NO. 3878 OF 2004
IN
CRIMINAL APPEAL NO. 735 OF 2004

Kailas N. Karbhari. .. Applicant

Vs

The State of Maharashtra. .. Respondent

Mr. Raju D. Suryawanshi for the applicant.

Mr. B.R. Patil, for the respondent-State.

Mr. C.G. Gavnekar for the intervenor.

CORAM: S.B. MHASE &
ANOOP V. MOHTA, JJ.

DATED: 03RD DECEMBER, 2004

P.C.:

1. This is a Bail Application by the original accused No.6. In all, there were 10 accused. Out of them, only one of the accused viz. accused No.6 Kailas is convicted for an offence under Section 147, and sentenced to RI for a period of two years and fine of Rs.250/-. He is also convicted under Section 302 r/w 149 IPC and sentenced for life and a fine of Rs.1,000/-. Rest of the accused are acquitted. It is the prosecution case that the accused No.6 - the present applicant was having a sickle in his hand. However, the

doctor has admitted in the cross-examination, after having been pointed out the sickle, that none of the injuries on the person of the deceased are possible by the sickle article 27. Therefore, at the most, presence of the accused can be said to have been proved. However, the charge was that he was a member of an unlawful assembly along with the rest of the accused and none of them have been convicted for offence under Section 147 and/or 149.

2. There was no charge that the applicant was member of an unlawful assembly with other unknown persons. Under these circumstances, we find, prima facie, that this is a fit case wherein bail can be granted.

3. The learned counsel for the Intervenor, Shri Gavnekar and Mr. B.R. Patil though vehemently opposed for grant of bail, we are not impressed by the submissions in view of the specific admission given by the doctor. Therefore, the following order:

O R D E R :

(A) The sentence passed in Sessions Case No. 105 of 2002 decided by the Additional Sessions Judge,

Kalyan, is hereby suspended till the final hearing of this Appeal.

(B) The appellant be released on a bail of Rs.15,000/- with one surety of the like amount and P.R. Bond till the final disposal of the Appeal.

(C) The appellant shall not tamper with or threaten the prosecution witnesses or the relatives of the deceased during the period of bail.

(D) The appellant is directed to report to the Mahatma Phule Police Station, Bazar Peth, Kalyan, once in a week i.e. on Sunday in between 10.00 a.m. to 11.00 a.m. This condition will be for a period of six months and thereafter, if the conduct of the appellant is found to be proper and satisfactory one, it stands removed.

4. Criminal Application is accordingly disposed of.

[ANOOP V. MOHTA, J.] **[S.B. MHASE, J.]**

[srpasha@hc]